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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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7 MICHELE JONES, et al.,

8 Plaintiffs,

9 v.

10 MICRON TECHNOLOGY INC., et al.,

11 Defendants.

12 IN RE DYNAMIC RANDOM ACCESS  
13 MEMORY (DRAM) DIRECT  
14 PURCHASER ANTITRUST LITIGATION

Case No. 18-cv-02518-JSW (KAW)

**ORDER REGARDING JOINT  
DISCOVERY LETTER**

Re: Dkt. No. 103

Case No. 18-cv-3805-JSW (KAW)

**ORDER REGARDING JOINT  
DISCOVERY LETTER**

Re: Dkt. No. 52

17 The instant cases concern allegations that Defendants conspired to raise market prices for  
18 Dynamic Random Access Memory (“DRAM”) products. DRAM is a semiconductor memory  
19 device that is used in digital electronics, including mobile phones, personal computers, tablets, and  
20 televisions. Plaintiffs represent two groups: direct purchasers (“DP”), who buy DRAM directly  
21 from Defendants, and indirect purchasers (“IP”), who buy the products that DRAM has already  
22 been incorporated into. The DP complaints have been consolidated into *In re Dynamic Random*  
23 *Access (DRAM) Direct Purchaser Antitrust Litigation*, Case No. 18-cv-3805 (“DP Case”), while  
24 the active IP case is *Jones v. Micron Technology, Inc.*, Case No. 18-cv-2518 (“IP Case”).<sup>1</sup>

25 Pending before the Court are two identical discovery letters, in which Plaintiffs request  
26 that the Court: (1) compel Defendants to produce documents provided to any regulatory or

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28 <sup>1</sup> There are currently three IP cases. On October 11, 2019, counsel in the three IP cases agreed to  
the consolidation of the cases into the *Jones* docket. (IP Case, Dkt. No. 105.)

1 governmental authority since January 1, 2017, specifically a Chinese investigation; and (2) compel  
2 the parties to promptly participate in a Rule 26(f) conference, or to produce the documents prior to  
3 the Rule 26(f) conference.<sup>2</sup>

4 **I. DISCUSSION**

5 **A. Production of Documents**

6 Rule 26(d) provides that “[a] party may not seek discovery from any source before the  
7 parties have conferred as required by Rule 26(f), except . . . when authorized by these rules, by  
8 stipulation, or by court order.” In deciding whether to allow early discovery, courts apply a good  
9 cause standard. *Twitch Interactive, Inc. v. Johnston*, Case No. 16-cv-3404-BLF, 2017 U.S. Dist.  
10 LEXIS 44863, at \*5 (N.D. Cal. Mar. 27, 2017); *Semitool, Inc. v. Tokyo Electron Am., Inc.*, 208  
11 F.R.D. 273, 276 (N.D. Cal. 2002). “Good cause may be found where the need for expedited  
12 discovery, in consideration of the administration of justice, outweighs the prejudice to the  
13 responding party.” *Semitool, Inc.*, 208 F.R.D. at 276.

14 The Court finds that Plaintiffs have not established good cause because they have not  
15 explained why they require expedited discovery. While Plaintiffs argue that other courts in this  
16 district “routinely order the production of antitrust investigation documents pending the filing of  
17 consolidated amended complaints,” the fact that other courts permit such production does not  
18 establish why Plaintiffs require expedited discovery here. (*See* Discovery Letters at 2.) Similarly,  
19 arguments that the burden to Defendants is minimal does not establish good cause, as Plaintiffs  
20 must still establish that their need for expedited discovery outweighs any such burden. (*See id.* at  
21 4.)

22 Moreover, the Court notes that in dismissing the IP Complaint’s Sherman Act claims, the  
23 presiding judge specifically did not consider allegations regarding the Chinese investigation,

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26 <sup>2</sup> Plaintiffs also request that the Court reset the date by which Plaintiffs are to file their amended  
27 complaints to forty-five days after the production of the documents. (Discovery Letters at 2.) In  
28 the referral order, the presiding judge stated that the deadlines for the IP amended complaint and  
DP consolidated complaint will be set after the undersigned “rules on the dispute outlined in the  
October 2, 2019 letter (namely, whether to compel production of certain documents or whether to  
order a Rule 25(f) conference).” (IP Case, Dkt. No. 104 at 3.) Therefore, the undersigned will not  
address the amended complaint deadline.

1 explaining that “[a]llegations concerning past or ongoing investigations are also not particularly  
2 helpful to suggest a contemporary conspiracy: the scope of an investigation is not always evident  
3 to the public or to the Court, and investigations that do not result in a finding of fact or admission  
4 suggest only that a government body believed a circumstance *appeared* suspicious.” (IP Case,  
5 Dkt. No. 98 at 26-27.) Further, “allegations of investigations outside of the United States are fully  
6 unpersuasive: foreign laws may prohibit behavior that is lawful under § 1.” (*Id.* at 27.) While  
7 Plaintiffs argue that other courts have permitted early discovery of documents provided to foreign  
8 investigatory bodies, Plaintiffs again do not explain why such discovery is warranted in this case.<sup>3</sup>  
9 Thus, for purposes of expedited discovery, the Court finds that Plaintiffs have failed to establish  
10 any need for the requested documents prior to the Rule 26(f) conference.

11           **B. Rule 26(f) Conference**

12           Rule 26(f)(1) requires that “the parties must confer as soon as practicable--and in any event  
13 at least 21 days before a scheduling conference is to be held or a scheduling order is due under  
14 Rule 16(b).” At the Rule 26(f) conference, the parties must make their Rule 26 disclosures and  
15 devise a proposed discovery plan, taking into consideration “the nature and basis of their claims  
16 and defenses . . . .” Fed. R. Civ. P. 26(f)(2).

17           Plaintiffs request that Defendants be ordered to participate in a Rule 26(f) conference,  
18 arguing that because “the case has been pending for over a year, it is appropriate and efficient for  
19 the parties to hold a Rule 26(f) conference now.” (Discovery Letters at 5.) Defendants respond  
20 that the current claims and defenses are not clear, as there is no operative complaint in the IP Case,  
21 and DP Plaintiffs have been ordered to file a consolidated complaint.

22           The Court finds that a Rule 26(f) conference is premature, particularly when the presiding  
23 judge will be setting briefing deadlines “on the expected motions to dismiss in the IP and DP  
24 cases.” (IP Case, Dkt. No. 104 at 3.) Thus, even if the general subject matter of the cases is  
25 known, the pleadings and scope of the specific claims are not settled, making it premature to make  
26 disclosures and discuss a discovery plan. *See Zavala v. Kruse-Western, Inc.*, 2019 WL 3219254,

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27           <sup>3</sup> In so finding, the Court’s analysis is based on the standards for early discovery. The Court does  
28 not find that such documents are not relevant or that they may not be discoverable at a later stage.

1 at \*2 (E.D. Cal. July 17, 2019) (denying motion to compel a Rule 26(f) conference because  
2 “[u]ntil the motion to dismiss is resolved, the actual claims and defenses at issue will be unclear”);  
3 *Contentguard Holdings, Inc. v. ZTE Corp.*, Case No. 12cv1226-CAB (MDD), 2013 WL  
4 12072533, at \*2 (S.D. Cal. Jan. 16, 2013) (finding no good cause to require a Rule 26(f)  
5 conference because “[u]ntil the motion to dismiss is resolved, the actual claims and defenses will  
6 be unclear. It would be inefficient and cause unnecessary expense for the parties to engage in  
7 discovery on claims that may not survive and defenses and counterclaims that may not be  
8 asserted”).

9 **II. CONCLUSION**

10 For the reasons stated above, the Court DENIES Plaintiffs’ request for expedited discovery  
11 or a Rule 26(f) conference.

12 **IT IS SO ORDERED.**

13 Dated: October 23, 2019

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15 KANDIS A. WESTMORE  
16 United States Magistrate Judge